



SARASOTA LITIGATOR Journal

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Business owners should be wary of disaster fraud

With the devastating affects of the record-breaking 2004 hurricane season still in evidence around Florida, and the 2005 season firmly upon us, we are reminded of how important it is for consumers and business owners to be extra careful when dealing with repairs after a catastrophic event.

Small business owners sink just about everything they have into their businesses. And when their operation is dealt a severe blow from a natural disaster, it's expected that anxious entrepreneurs will try to get their enterprises up and running with a minimum of down time. After all, if they can't open their doors, they won't be generating any revenue.

Owners' intent on rebuilding their shops and offices are cautioned to be wary of scams perpetrated by so-called building repair contractors. While most contractors are reputable, there are others who take advantage of those needing repairs by using inferior materials, performing shoddy work not up to code or attempting to manipulate disaster victims into making claims for losses that did not occur, which is insurance fraud.

Case in point is the situation in Florida, where one in every five structures was damaged after Florida became the first

state to withstand a four-hurricane pounding in one season since Texas in 1886. Experts caution small business owners to follow some basic rules when proceeding with repair plans.

Check those IDs at the door

Fiducial's Jim Rizzolo has his franchise office in Port St. Lucie, Fla., one of the areas hardest hit by Hurricane Jeanne last year with winds in excess of 120 miles per hour. In the storm's aftermath, he urged owners to take a close look at those representing themselves as legitimate contractors and to make them prove their case.

"Make sure the person is licensed and insured," said Rizzolo who is currently dealing with a damaged roof courtesy of Hurricane Frances. "You can check their contractor's license number on the Internet as well as their certificate of insurance. I'm here with a contractor right now because I have to have a new roof."

Business owners now have to play the waiting game -- waiting for an insurance adjustor to appraise the damage and then waiting for the work to be performed. Taking precautions for an oncoming storm always needs to be done but there are limitations.

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Wittmer firm secures \$300,000 payment from insurance company on \$10,000 policy

It was 3:00 a.m. and Larry DePaoli was beginning his regular route, delivering newspapers for the local daily newspaper. At the same time, Darbi Damon was driving home after a night of drinking and partying. It would become apparent that Ms. Damon was highly intoxicated and unable to drive her vehicle in a safe manner.

Damon plowed into Mr. DePaoli's van, breaking his seat and sending him to the hospital. After months of therapy and treatment for back, neck and jaw injuries, Mr. DePaoli discovered he would need surgery to correct the damage done to both temporomandibular (TMJ) joints in his jaw. His medical expenses, which had already exceeded \$20,000 by this time, would soon escalate by an additional \$40,000 for the required surgery.

Several months following the accident, Mr. DePaoli's attorneys gave Damon's insurance company the opportunity to settle his claims in exchange for full payment of the \$10,000 limits of her automotive liability policy. The insurance company refused to settle the case and Mr. DePaoli was forced to file suit.

After several months of negotiation, our firm was able to convince Damon's insurance company that they had violated Florida law by delaying settlement, thus exposing their insured to damages beyond the policy limits of \$10,000. Convinced of their error, Damon's insurance company paid \$300,000 to settle Mr. DePaoli's claims.

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Medical malpractice claims stable since 1990, new study finds. Costs don't appear to be at the root of rising medical malpractice premiums

Research suggests soaring Florida premiums could be fault of insurance business cycle

According to an exhaustive analysis of data by two Duke University professors, there has been no dramatic increase in the number of medical malpractice claims filed in Florida in the past 14 years, when compared with the state's population growth.

The new study, in essence, contradicts a popular assertion made to justify higher med-mal insurance costs.

"There are two arguments about the cause -- one is that the number of claims went up and the other is the insurance industry's business cycle," says Neil Vidmar, co-author of the study and a law professor at Duke University in Durham, N.C. "We say one of the alleged causes is not the cause -- so you're left to fall back on the other alleged cause."

According to Sarasota attorney Steven T. Wittmer, "There's no question doctors have been paying outlandish amounts for malpractice premiums. But are medical malpractice claims really on the rise? Are they really to blame? This research suggests that the 'crisis' has been created by insurance companies that want to write medical malpractice insurance but not pay claims." "It underscores what we've been saying forever," says Alexander Clem, president of the Academy of Florida Trial Lawyers.

The study, which spanned 1990-2003, also says most large payments to malpractice victims were made in settlements -- many without a lawsuit being filed. That, researchers say, suggests the cry for tort reform is out of line.

"It doesn't look like the jury is the big culprit," says Vidmar.

Officials at the Rockville, Md.-based Physician Insurers Association of America say they agree with its main premises that the number of claims has stayed relatively even and that most claims are settled.

Instead, association officials blame rising malpractice premiums on the increase in the average amount of med-mal claims payment.

The study says the growth in the amounts paid to med-mal victims has increased only slightly, along with the severity of injuries suffered. "There has been a shift in the kinds of cases coming forward," Vidmar says. "In the 1990s, there were more low injury-type cases, but in 2000 to 2003, there are substantially more death cases."

The study, "Uncovering the 'Invisible' Profile of Medical Malpractice

Litigation: Insights from Florida," is being published at a time when the Florida Legislature continues to grapple with ways to solve the state's thorny med-mal crisis.

The study was done by Vidmar and Dr. Paul Lee, who is a physician-attorney and a medical professor at Duke, and was released in the Winter 2005 edition of the *DePaul Law Review*, a national law journal published by DePaul University in Chicago.

Others involved in the research were Duke law students Kara MacKillop and Kieran McCarthy, as well as University of Alabama associate professor of epidemiology, Gerald McGwin. The data came from detailed reports of all closed claims submitted by medical malpractice insurers to the Florida Department of Health. The researchers also used jury verdict reports compiled by Westlaw, a provider of online legal resources. The research was paid for by Duke University.

"Florida has a wonderful database, so we seized upon it," says Vidmar. "It is the best data available anywhere in the country, and Florida has had considerable controversy, so it all fit together."

Who's at fault?

Doctors and medical malpractice insurers typically say the reason med-mal insurance costs have climbed dramatically in recent years is because the number of cases and dollar amounts of paid claims have increased through the years.

That's why Florida doctors fought for -- and won -- caps put on the amount of money that could be awarded to malpractice victims for pain and suffering.

Meanwhile, trial lawyers dispute the argument that the number of med-mal cases has risen in the state. Instead, they blame rising insurance costs on the underpricing

of policies, poor insurer investments and downturns in the business cycle. State law forbids insurers from raising rates to make up for lackluster investments and past pricing mistakes.

There are 92 companies that offered med-mal coverage in Florida last year with a total of \$858.5 million in direct premiums written, according to state records. The five largest in the state were granted average statewide rate hikes of 18.4 percent in 2003, 17.2 percent last year and 8.6 percent this year, say officials at the Florida Office of Insurance Regulation.

For the complete text of this story, visit www.sarasotalitigator.com/newsletter.



Be wary of disaster fraud

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"There's only so much you can do with your building," he said. "Many structures have storm protection. Plywood helps so there are not a lot of windows that get blown out. But roofs do come off and water comes in that soaks into your sheetrock, your furniture, your interior walls and flooring."

The agency charged with investigating insurance fraud says there hasn't yet been a flood of these types of fraud cases since entrepreneurs usually want to get repairs made as soon as possible to reopen their businesses.

"People are more interested in getting their property fixed," said Nina Banister, press secretary for the Florida Department of Financial Services in Tallahassee. "That's all they care about right now."

She advises residents with damaged homes and businesses to be patient and remember there are protections in place to help them. This includes a 10% cap on fees that public adjustors can charge.

"You have 14 days to back out of a contract with a public adjustor if you've changed your mind," said Banister.

Fraudsters face stiff fine, penalties

Penalties could be severe for those committing insurance fraud, industry watchers say.

Public adjustors could lose their licenses to work in the insurance industry while adjustors, contractors and business owners involved in perpetrating these crimes face charges of insurance fraud and grand theft. The degree of grand theft is based on the amount of money received from the crime. First-degree grand theft under Florida's statutory law is punishable by up to 30 years in prison and up to a \$30,000 fine per count depending on the type of insurance.

With business owners intent on getting their offices structurally sound as quickly as they can, Banister reminds them that adjustors are working hard but thousands of people are looking to get this work done.

"Be wary of fly by night contractors, especially if they make promises that sound too good to be true like fixing some huge loss in a couple of weeks," she said.

State Farm Insurance, the state's largest insurer of homes and vehicles, estimates that there was \$1.3 billion in claim payments from Hurricane Charley alone, the first hurricane to hit Florida last season. State Farm spokesman Tom Haggerty, who works out of Winter Haven, Fla., says business owners should take preventive steps to protect their property.

"Board the windows and try to have a good inventory of all your possessions so in the event of extensive damage this can expedite the claim process," he said. "If your property is damaged, as long as it is habitable make any temporary repairs such as on the roof to keep water from coming in. Keep your receipts and make those repairs."

Haggerty says it's important for business owners not to jump the gun when it comes to hiring a contractor to repair the damage, no matter how determined they are.

"Make sure you see a license [from the contractor] and don't let yourself be rushed into anything," he said. "Like the old adage: if it sounds too good to be true it probably is."

The National Insurance Crime Bureau (NICB), a not-for-profit organization that partners with insurers and law enforcement agencies to facilitate the identification, detection and prosecution of insurance criminals, says that small business owners must maintain their vigilance after tragedies strike.

"A massive rebuilding effort is underway now and you have more than likely the bigger risk for contracting trades people who purport themselves to

be licensed to do this work," said Frank Scafidi, public affairs director for NICB. "That's what we're finding -- that's where the bulk of the fraud comes in."

Get everything in writing

Warning business owners about these scams, Scafidi reminds them to always get everything in writing such as the cost of the work, the time frame, guarantees, payment schedule and to ask for references.

"In a post-storm scenario the pressure is tremendous to get back on your feet," he said. "But don't forget to ask for forms of identification like a driver's license."

NICB's investigators and analysts work hand in hand with special investigation units with the insurance companies to uncover any fraudulent activity. There is literally an army of adjustors now in Florida trying to make a difference amid a massive rebuilding effort.

After Hurricane Andrew struck in 1992, Florida saw a toughening of its building codes. One way to shave corners on costs is to skimp on the materials for the construction process.

"Most of these folks [fraudsters] if they can convince owners to 'buy materials' then you will never see them again," Scafidi said. He tells those seeking to rebuild to take a deep breath, really study the paperwork and check references. "The bottom line is to follow your instincts," he said. "If you think it's a little fishy, pass it by."

Motorcycle collision settles for \$500,000

In July 2003, Mr. Doe (Client's name withheld) was heading to his Sarasota County place of business on his motorcycle when a utility truck made a left turn in front him. With no chance of avoiding the collision, Mr. Doe slammed into the passenger's side of the utility truck. He was rushed to the hospital with severe injuries throughout his body, and underwent two emergency surgeries to his right leg and knee to repair his broken tibia/fibula with placement of internal rods.

Once Mr. Doe began bearing weight on his right leg, it was determined that an additional surgery was required to repair ligaments in his right knee. Furthermore, Mr. Doe sustained injuries to the right shoulder, neck and low back, requiring months of therapy and treatment. Mr. Doe's medical bills exceeded \$50,000 with future care estimated at an additional \$30,000.

Due to the extensive rehabilitation Mr. Doe required, his business sustained economic losses. After litigation commenced, depositions and discovery revealed the massive extent of his economic and non-economic losses. At mediation, the self-insured utility company agreed to pay Mr. Doe \$500,000 to settle his claims.



Selecting an attorney specializing in civil trial

To assist you in finding a lawyer who is able to handle your particular legal situation, and who has expertise in the area of law relating to your legal needs, the Supreme Court of Florida directed The Florida Bar to offer a "Board Certification" program for Florida Bar members. The program is designed to help the public make an informed decision when seeking and selecting a lawyer.

While all lawyers are allowed to advertise, only certified attorneys are allowed to identify themselves as "Florida Bar Board Certified" or as a "specialist." Certification is the highest level of recognition by The Florida Bar of the competency and experience of attorneys in the areas of law approved for certification by the Supreme Court of Florida.

A lawyer who is a member in good standing of The Florida Bar and who meets the standards set by the Supreme Court of Florida, may become a "Board Certified Civil Trial Lawyer." Certified lawyers in civil trial law deal with litigation of civil controversies in all areas of substantive law before state and federal courts, administrative agencies and arbitrators.

Every board certified civil trial lawyer has practiced law for at least five years and been substantially involved -- 30 percent or more -- in the area of civil trial law during the three years preceding application. To be certified, the lawyer is required to have conducted at least 15 contested civil

cases in courts of general jurisdiction during the lawyer's practice, including cases before a jury and as lead counsel. Credit is given to the lawyer if he or she has served as a judge.

Each certified lawyer must also have passed peer review, completed 50 hours of continuing legal education within the three years preceding application and passed a written examination demonstrating knowledge, skills and proficiency in the field of civil trial law to justify the representation of special competence.



Board certification is valid for five years, during which time the attorney must continue to practice law and attend Florida Bar-approved continuing legal education courses. To be recertified, requirements similar to those for initial certification must be met. Not all qualified lawyers are certified, but those who are board certified have taken the extra step to have

their competence and experience recognized.

For more information, please contact:
The Florida Bar
Legal Specialization & Education Department
651 E. Jefferson Street
800/342-8060
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The hiring of an attorney is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

Your referral can help a friend or family member

Please feel free to refer us to your family, friends or neighbors for their legal needs. We welcome the opportunity to help individuals in matters of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation. Call our office at (941) 365-2296 if we can be of assistance.

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